

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of:)	
)	
Cross Hill Communications, LLC, licensee of)	
Station WYCX-CD)	CSR-8872-M
)	Docket No. 14-31
v.)	
)	
Duncan Cable TV)	
Wilmington, VT (VT0164))	

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 2014

Released: May 29, 2014

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Cross Hill Communications, LLC (“Cross Hill”), licensee of Low Power Station WYCX-CD, Manchester and Londonderry Vermont, and South Charlestown, New Hampshire (“WYCX-CD”) has filed the above-captioned complaint against Duncan Cable TV (“Duncan”) for its failure to carry WYCX-CD on its cable system serving Wilmington in Windham County, Vermont.¹ No opposition to this complaint was filed. For the reasons discussed below, we grant WYCX-CD’s must-carry request.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission’s rules require the carriage of “qualified” low power television (“LPTV”) stations in certain limited circumstances.² An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission’s rules will be considered “qualified” if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station’s community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system’s headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas (“MSAs”) on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.³

¹ See Complaint of Cross Hill Communications, LLC, filed Feb. 11, 2014 (“Complaint”).

² 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

³ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

3. Under certain limited circumstances set forth in the Commission's rules, cable systems with more than 12 usable activated channels are required to carry low power television stations on their channel lineups.⁴ Stations with 35 or fewer usable activated channels that have not filled the channel set aside for local commercial television stations must carry one "qualified" low power television station, and stations with more than 35 usable activated channels that have not filled the channel set aside for local commercial television stations must carry two "qualified" low power television stations.⁵

III. DISCUSSION

4. From the evidence in WYCX-CD's complaint, Cross Hill was not the licensee of WYCX-CD at the time the latest cycle of must-carry election notices were due and asserts that the previous licensee did not make an affirmative election on October 1, 2011 to be carried on Duncan's cable system serving Wilmington in Windham County, Vermont, and accordingly, WYCX-CD defaulted to must carry status.⁶ WYCX-CD affirms that Duncan does not presently carry the signal of WYCX-CD.⁷

5. WYCX-CD states that it requested mandatory carriage on Duncan's cable system by letter delivered on November 13, 2013 and Duncan has not responded in writing.⁸ Accordingly, Cross Hill filed a complaint based on Duncan's assumed rejection of the carriage demand 30 days after the must carry notice was delivered.⁹

6. WYCX-CD asserts that it meets all statutory requirements to be a "qualified" low power television station.¹⁰ WYCX-CD asserts that it: (1) broadcasts 24 hours per day meeting the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) adheres to the Commission's rules regarding non-entertainment and employment practices and the nearest full power stations in Rutland, VT and Manchester, NH are 73 miles and 100 miles away, respectively; (3) the station has not received any complaints of interference with the reception of any other station; (4) a recent air check indicated that a good quality signal is receivable close to the Duncan cable headend approximately 15 miles from Wilmington; (5) no full power television station is licensed to any community in Wilmington and Windham County, Vermont or Sullivan County, New Hampshire;¹¹ (6) although WYCX-CD also argues the populations of the communities where WYCX-CD is licensed (Manchester and Londonderry, Vermont and South Charleston, New Hampshire) total less than 35,000 persons and the population of Wilmington where WYCX-CD plans to serve is also less than 35,000 persons, and that these communities are outside the top 160 largest MSAs – the rule actually requires that such assertions be true as of June 30, 1990 using data and rankings as determined by the the Office of Management and Budget at that time. Although, WYCX-CD does not provide this information, our own findings indicate that its communities

⁴ Section 76.56(b)(2) provides that "[a] cable system with more than 12 usable activated channels, as defined in Section 76.5(o), shall carry local commercial television stations up to one-third of the aggregate number of usable activated channels of such system." 47 C.F.R. § 76.56(b)(2).

⁵ 47 U.S.C. § 534(c)(1)(A); 47 C.F.R. § 76.56(b)(3).

⁶ See *Folse Comm., LLC v. Allen's TV Cable Service, Inc.*, 18 FCC Rcd 11304, 11306, ¶ 6 (MB June 2, 2003) (a low power must carry station may be carried by default).

⁷ Complaint at 4.

⁸ *Id.* at 3 & Exhibit A, Letter from Gregory Uhrin, Manager & COO, WYCX-CD, to Clifford Duncan, Duncan Cable TV at 1-2 (Nov. 13, 2013)

⁹ *Id.*; 47 C.F.R. § 76.61(a)(5)(i)–(ii) (to be considered timely by the Commission a must-carry complaint must be filed within sixty days of the denial by the cable operator of the request for carriage or of the failure of such operator to respond to the carriage demand).

¹⁰ Complaint at 3.

¹¹ Complaint at Exhibit A at 2.

of license and the cable franchise area where it seeks carriage were indeed outside of the top 160 MSAs in 1990.¹²

7. Duncan failed to file an opposition disputing these assertions. As shown in WYCX-CD's complaint, Duncan's system has more than 35 activated channels, and not more than one-third of its channels are filled with broadcast signals.¹³ Under such conditions, Section 76.56(b)(3) of the Commission's rules requires carriage of up to two "qualified" LPTV stations.¹⁴

8. As outlined above, Congress has identified six factors that determine whether a low power station is "qualified" and therefore entitled to carriage rights.¹⁵ Because a low power television station must meet each of the six criteria required by the Act and the Commission's rules, its failure to meet just one is fatal to its request for mandatory carriage.¹⁶ WYCX-CD has provided evidence that it satisfies all six of the statutory requirements as outlined above to be classified as a "qualified" LPTV station, and that Duncan has sufficient usable activated channels. In the absence of any demonstration to the contrary by Duncan, we find that WYCX-CD is a "qualified" LPTV station and must be carried on Duncan's cable system.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Sections 76.55(d) and 76.56(b)(3) of the Commission's rules, 47 C.F.R. §§ 76.55(d) & 76.56(b)(3), that the must carry complaint filed by Cross Hill Communications, LLC, Licensee of Station WYCX-CD, Manchester and Londonderry, Vermont and South Charleston, New Hampshire **IS GRANTED**.

10. It is **FURTHER ORDERED** that Duncan Cable TV shall commence carriage of Low Power Station WYCX-CD on its cable system serving Wilmington County, Vermont **WITHIN SIXTY (60) DAYS** of the release of this Order.

11. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.¹⁷

FEDERAL COMMUNICATIONS COMMISSION

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Senior Deputy Chief, Policy Division
Media Bureau

¹² See Statistical Abstract of the United States 1992 at 30-32, & Table No. 34 Metropolitan Areas – Population: 1970 to 1990; see also Metropolitan Areas and Components, 1990 with FIPS Codes, <http://www.census.gov/population/metro/files/lists/historical/90mfips.txt> (last visited May 28, 2014).

¹³ See Complaint at Exhibit C.

¹⁴ 47 C.F.R. § 76.56(b)(3) "If there are not enough local commercial television stations to fill the channels set aside under paragraphs (b)(1) and (b)(2) of this section, a cable operator of a system with 35 or fewer usable activated channels, as defined in § 76.5(oo), shall, if such stations exist, carry one qualified low power television station and a cable system with more than 35 usable activated channels shall carry two qualified low power stations."

¹⁵ See 47 U.S.C. § 534(h)(2)(A)-(F) & 47 C.F.R. § 76.55(d)(1)-(6).

¹⁶ See *Continental Broad. Corp.*, 9 F.C.C.R. at 2551, ¶ 7.

¹⁷ 47 C.F.R. § 0.283.